

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

MARCO A. VELEZ,

Petitioner,

vs.

ANTHONY HAYNES, Warden,

Respondent.

CIVIL ACTION NO.: CV210-100

ORDER

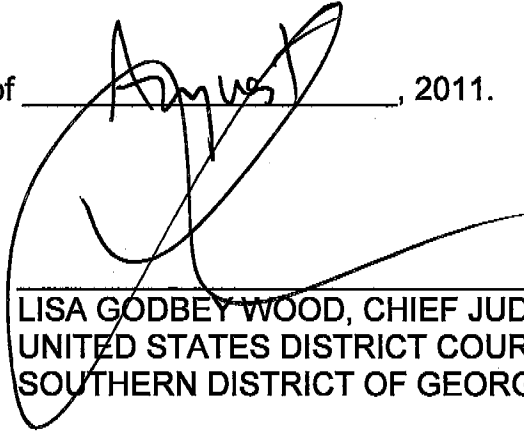
After an independent and *de novo* review of the entire record, the undersigned concurs with the Magistrate Judge's Report and Recommendation, to which Objections have been filed. In his Objections, Petitioner Marco Velez ("Velez") contends that the Eleventh Circuit Court of Appeals did not decide in Gilbert v. United States, 640 F.3d 1293 (11th Cir. 2011), that a due process claim is barred from consideration in a 28 U.S.C. § 2241 petition. Velez asserts that he has raised his claim that one of his previous convictions is not a "crime of violence" on previous occasions, and, accordingly, he is barred from bringing this claim pursuant to 28 U.S.C. § 2255. Velez also asserts that he cannot bring a second or successive § 2255 motion because that statute does not allow for a sentencing claim.

Velez is correct that Gilbert does not bar consideration of a due process claim in a § 2241 petition; however, other principles applicable to section 2241 do. As the

Magistrate Judge noted, Velez must satisfy the savings clause of § 2255 to proceed via a § 2241 petition. Velez has failed to make this showing.

Velez's Objections are **overruled**. The Magistrate Judge's Report and Recommendation is adopted as the opinion of the Court. Respondent's Motion to Dismiss is **GRANTED**. Velez's petition for writ of habeas corpus, filed pursuant to 28 U.S.C. § 2241, is **DISMISSED**. Velez's Motion for Transfer of Habeas Petition to Sentencing Court is **DISMISSED**. The Clerk of Court is directed to enter the appropriate judgment of dismissal.

SO ORDERED, this 29 day of August, 2011.



LISA GODBEY WOOD, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA